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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 365 OF 2004

Nivrutti Nathu Bagade & Ors. ... Appellants.

Vs.

Shivaji Dharma Bagade & Ors. ...Respondents.

Mr. G.S.Godbole for the appellants.

Mr. P.S.Dani for respondent Nos. 1 to 5.

CORAM : ANOOP V. MOHTA,J.

DATED : 18th July, 2007

P.C.

1. The appellants, original defendants have challenged the judgment and order dated 28th October, 2007 passed by the 7th Ad-hoc Additional District Judge, Pune whereby the appeal was dismissed under decree of the Trial Court dated 20/02/2003 passed by the Jt. Civil Judge, Junior Division, Khed, has been confirmed.

2. In the result, the properties have been divided as under:-

"1. It is hereby declared that plaintiffs No.1 to5

and defendants No.1 to 4 have 1/2 share each in suit property 1A, bearing Gat Nos. 36, 49 and 27 and house property No.395, situated at Village Kuruli, Tal. Khed, Dist. Pune, more particularly described in plaint Para No.1.

2. Plaintiffs are entitled to partition and separate possession of their 1/2 share out of suit property Gat No.36, 49 and 27. So for that purpose decree be sent to Collector for effecting partition and handing over separate possession as directed subject to provisions made in Sec. 54 of C.P.C.

3. Court Commission be appointed for suggesting partition of house property No.395 and there after separate possession be handed over to plaintiffs of their 1/2 share out of the house property."

3. The partial partition is impermissible and therefore, the judgment and order passed by both the Courts are bad in law. In answer to this, the learned counsel appearing for the respondents pointed out para 18 of the appellate Court which is reproduced as

under:-

. "The learned advocate for the respondents appellants did not touch any other ground, appearing in the appeal memo; other than point of 'prior partition'. The learned advocate for the respondents also restricted his arguments to the extent of Exhibit 107."

4. In view of the above observations as the contesting parties, not pressed the particular point and restricted the submission to the extent of Exh.107, I am of the view that, there is no reason now to allow the party to agitate this issue about partial partition in the Second Appeal. Therefore, without observing the merit of the submission, there is no point to accept the contention as raised by the learned counsel appearing for the appellant in reference to the partial partition. The parties can definitely waive their respective rights of their respective properties. Having once not agitated the said issue, at first appellate stage, there is no reason to accept the said submission again in the

Second Appeal.

5. In so far as the Exhibit 107 is concerned, both the courts come to the conclusion and that findings therefore, cannot be said to be perverse and need no interference specially when this issue not pressed in this Second Appeal.

6. The learned counsel appearing for the appellant lastly relied on the Judgment of this Court, **Janardan Nago Vs. Ramanand, 2003(4) Mh.L.J., 853** and thereby contended that the first appellate court being the final Court, must frame points for determination and record its findings thereon accordingly. Based on the Order 41 Rule 31 of Civil Procedure Code (CPC), this court had therefore, in that case, remanded the matter.

6. In the present case, first of all, in view of the para 18 referred above, the appellant themselves have restricted the points and therefore, having once restricted the same point, it is necessary for the appellate Court to frame the issues and give reasons separately. Therefore, the above judgment in Janardan (supra) is of no assistence to the appellant.

7. After hearing both the parties and after going through the reasoning given by the appellate Court while dismissing the appeal, the appellate Court has considered all the aspects based upon the points/ issues framed by the Trial Court and basically accepted those reasoning. Apart from that, the appellate Court has applied his mind and pass the reasoned order while confirming the reasoning given by the trial Court. The Appellate Court, in such cases where the reasonings of the trial court if found to be correct and within the framework of law and record need not pass detailed reasons again to confirm the decree, given by the Trial Court. Merely because, issues were not specifically framed, that itself cannot be the reason to interfere with the concurrent finding in the Second Appeal, specially in the facts and circumstances of this case.

8. As noted above, there is no such case made out by the appellant. Resultantly the Second Appeal is dismissed.

(ANOOP V. MOHTA, J.)